



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

August 16, 1996

The Honorable Judith Zaffirini
State Senator
P.O. Box 627
Laredo, Texas 78042-0627

The Honorable Delma Rios
Kleberg County Attorney
P.O. Box 1411
Kingsville, Texas 78363

Open Records Decision No. 646

Re: Whether records maintained by a
Community Supervision and Corrections
Department are subject to the provisions
of Chapter 552 of the Government Code
and related questions (ORQ-9)

Dear Senator Zaffirini and Ms. Rios:

The Kleberg County Attorney asks the following questions:

Whether or not the Community Supervision and Corrections
Department is an extension of the judiciary within meaning of the
judiciary exception to Open Records Act. . . .

Whether or not [information relating to] the administrative functions
of the Community Supervision and Corrections Department is
subject to the Open Records Act.

Senator Zaffirini asks whether certain personnel records of the 38th Judicial District
Probation Office are subject to disclosure under the Open Records Act.

The Texas Open Records Act (the "act") generally requires the public disclosure
of information maintained by a "governmental body." The act defines a "governmental
body" as including, among other things,

- (i) a board, commission, department, committee, institution,
agency, or office that is within or is created by the executive or
legislative branch of state government and that is directed by one or
more elected or appointed members;

....

(x) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds; and

(B) does not include the judiciary.

Thus, section 552.003(B) of the Government Code excludes the judiciary from the list of governmental bodies that are subject to the provisions of the Open Records Act. This office must therefore determine whether records that are maintained by a community supervisions and corrections department are records of the judiciary.

Provisions in chapter 76 of the Government Code provide for the establishment of a community supervision and corrections department (a "department"). Section 76.002 provides that

(a) The district judge or district judges trying criminal cases in each judicial district shall:

(1) establish a community supervision and corrections department; and

(2) employ district personnel as necessary to conduct presentence investigations, supervise and rehabilitate defendants placed on community supervision, enforce the conditions of community supervision, and staff community corrections facilities.

In addition, the district judges and judges of statutory county courts are "entitled to participate in the management of the department." Gov't Code § 76.002(b). Section 76.004 directs the district judges to appoint a director of the department who employs other department personnel.¹ Community supervision and corrections departments are authorized to expend county, district and state funds subject to various statutory limitations. *Id.* at §§ 76.008, 76.009, 76.010.

Because section 552.003 of the Government Code provides that for purposes of the act, the term governmental body does not include the judiciary, we must determine whether the district judges in performing their statutory administrative oversight duties over supervision and corrections departments are performing judicial functions which would effectively incorporate such departments into the judiciary. Clearly, supervision

¹In Attorney General Opinion DM-208, this office concluded that the term "employ" found in section 76.002 authorizes district judges to compensate but not to hire district personnel. That decision further concluded that section 76.004 authorizes a department director, appointed by the district judges, to "employ" or hire department personnel. Attorney General Opinion DM-208 (1992).

and corrections departments are "supported in whole or in part by public funds," under section 552.002(A)(x). Thus, if these departments are not part of the judiciary, they will be considered governmental bodies subject to the Open Records Act.

In *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ), the court construed the purposes and limits of the judiciary exception. The *Benavides* court held that the Webb County Juvenile Board was not part of the judiciary for purposes of the act, despite the fact that the board consisted of members of the judiciary and the county judge. The court explained the purpose of the judiciary exception as follows:

The judiciary exception...is important to safeguard judicial proceedings and maintain the independence of the judicial branch of government, preserving statutory and case law already governing access to judicial records. But it must not be extended to every governmental entity having any connection with the judiciary.

....

The Board is not a court. A separate entity, the juvenile court, not the Board, exists to adjudicate matters concerning juveniles. . . . Moreover, simply because the Legislature chose judges as Board members, art. 5139JJJ, § 1, [V.T.C.S.,] does not in itself indicate they perform on the Board as members of the judiciary. . . . The Board's role as described in art. 5139JJJ is exclusively administrative.

Benavides, 665 S.W.2d at 151-52; *see also* Open Records Decision No. 572 (1990) at 3 (concluding that "analysis of the judiciary exception should focus on the governmental body itself and the kind of information requested") (citing *Benavides*, 665 S.W.2d at 151).

Benavides dealt with the question of whether the specific exclusion of the "judiciary" from the Open Records Act applied to resumes of applicants for the position of juvenile probation officer in the hands of a juvenile board composed of members of the judiciary and the county judge. The court found that the board's selection of a probation officer "is simply part of the Board's administration of the juvenile probation system, not a judicial act by a judicial body," and held that the board is a governmental body subject to the Open Records Act, thus requiring public release of the requested records. *Id.* at 152; *see also, e.g.*, Open Records Decision Nos. 527 (1989) at 3 (relying on *Benavides*), 417 (1984) at 1 (same).

We believe that the analysis used in *Benavides* controls in this instance. The function that a governmental entity performs determines whether the entity falls within the judiciary exception to the Open Records Act. If the entity, comprised of judges, performs primarily administrative functions, the entity is not judicial in nature and is thus

subject to the Open Records Act. In this case, the role of district judges in the oversight of a supervision and corrections department is purely administrative in nature. Furthermore, records regarding the administration of a supervision and corrections department, such as personnel files and the vehicle records at issue in Ms. Rios' request, deal solely with the judges' administration of an individual department. The judges' oversight of a department does not determine whether the departments' records are records of the judiciary. The judges connected with a department do not act in a judicial capacity regarding these administrative matters nor are such records prepared for the use of a court in its judicial capacity. Moreover, as in *Benavides*, the statute governing community supervision and corrections departments suggests that members of the judiciary who are involved in community supervision and corrections departments perform administrative as opposed to judicial functions. See *Benavides*, 665 S.W.2d at 152 ("classification of the Board as judicial or not depends on the functions of the Board, not on members' service elsewhere in government"). Accordingly, the department is not part of the judiciary for purposes of the Open Records Act.²

It has been suggested that Open Records Decision No. 236 (1980) applies to the personnel records of probation officers. However, the records at issue in that decision, records regarding individuals on probation, are distinguishable from the administrative records at issue in the instant requests. State courts are responsible for supervising probationers. Article 42.12, section 1 of the Code of Criminal Procedure provides that state courts are responsible for "determining when the imposition of sentence in certain cases shall be suspended, the conditions of community supervision, and the supervision of defendants placed on community supervision." In Open Records Decision No. 236 (1980) at 2, this office concluded that probation officers who act according to the court's direction serve merely as the court's agents in carrying out their supervisory duties. Because district court judges have the ultimate direction and control over the supervision and rehabilitation of probationers, the probation department maintains probationers' records solely on behalf of the court. Probationers' records are therefore records of the judiciary and are not subject to the provisions of the Open Records Act.³

²Relying on the analysis in *Benavides*, this office has recently concluded that meetings of judges to perform statutory functions with respect to the management of a community supervision and corrections department are subject to the Open Meetings Act, chapter 551, Government Code. Attorney General Opinion DM-395 (1996). That decision concluded that "a court would probably characterize the statutory functions of the committee of judges here with respect to the CSCD--the appointment of the CSCD director and approval of CSCD expenditures--as administrative rather than judicial." *Id.* at 5. Furthermore, that decision concluded that "we do not believe [the committee of judges] should be considered one within the judicial branch of state government." *Id.*

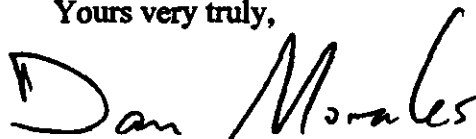
³The release of these records is within the discretion of the court, acting through its agent, the probation department. Open Records Decision No. 236 (1980) at 2-3.

Thus, to fall under the judiciary exception, the document must contain information that pertains to judicial proceedings. *See* Open Records Decision Nos. 527 (1989) (Court Reporters Certification Board not part of judiciary because its records do not pertain to judicial proceedings), 204 (1978) (information held by county judge that does not pertain to proceedings before county court subject to Open Records Act). As this office concluded in Open Records Decision No. 236 (1980), a community supervision and corrections department holds probationers' records on behalf of the judiciary as an agent of the judiciary and thus, such records are not subject to the disclosure provisions of the Open Records Act. With respect to the particular records at issue in Kleberg County and those personnel records of which Senator Zaffirini inquires, we believe that such records are strictly administrative in nature and are thus subject to the Open Records Act.

SUMMARY

A community supervision and corrections department is a governmental body and is not part of the judiciary for purposes of the Open Records Act. Administrative records such as personnel files and other records reflecting the day-to-day management of a community supervision and corrections department are subject to the Open Records Act. On the other hand, specific records regarding individuals on probation and subject to the direct supervision of a court that are held by a community supervision and corrections department are not subject to the Open Records Act because such records are held on behalf of the judiciary.

Yours very truly,

A handwritten signature in black ink that reads "Dan Morales". The signature is fluid and cursive, with a large initial "D" and "M".

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

LAQUITA A. HAMILTON
Deputy Attorney General for Litigation

SANDRA L. COAXUM
Chief, Open Records Division

Prepared by Loretta R. DeHay
Deputy Chief, Open Records Division